

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-03-KC-031
	)	
Davies Communications Inc.	)	NAL/Acct. No. 200332560020
Licensee of Radio Stations KBBE and KNGL in	)	
McPherson, Kansas	)	FRN 0008-5372-92
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: April 7, 2003

By the Enforcement Bureau, Kansas City Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Davies Communications Inc. (“Davies”), licensee of KBBE and KNGL, McPherson, Kansas, apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Section 73.3526(a)(2) of the Commission’s Rules (“Rules”).<sup>1</sup> Specifically, we find Davies apparently liable for failing to maintain all required material in the stations’ public inspection files.

**II. BACKGROUND**

2. On February 13, 2003, an agent of the Commission’s Kansas City Office inspected radio stations KBBE and KNGL, McPherson, Kansas. The stations’ public files had no issues and programs lists. Station management stated that neither station had ever maintained an issues and programs list.

**III. DISCUSSION**

3. Section 73.3526(a)(2) of the Rules requires AM, FM and TV licensees and permittees to maintain a public inspection file. Among the required material to be maintained in the public file, AM and FM licensees and permittees must maintain a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period. The lists shall be retained in the public inspection file until final action has been taken on the station’s next renewal application.<sup>2</sup> On February 13, 2003, a review of the KBBE and KNGL public inspection files revealed no issues and programs lists. Station management stated that no issues and programs lists had ever been maintained for either station.

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<sup>1</sup> 47 C.F.R. § 73.3526(a)(2).

<sup>2</sup> See 47 C.F.R. § 73.3526(e)(12).

4. Based on the evidence before us, we find that Davies willfully<sup>3</sup> and repeatedly<sup>4</sup> violated Section 73.3526(a)(2) of the Rules by failing to maintain all required material in the stations' public inspection files.

5. Pursuant to Section 1.80(b)(4) of the Rules,<sup>5</sup> the base forfeiture amount for public file rule violations is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."<sup>6</sup> In this case, we consider that the issues and programs list was the only item missing from the public inspection files, but that the item had never been maintained by Davies, and was missing from both stations' files. Therefore, we assess the forfeiture amount for the public file violation at \$3,000. Considering the entire record and applying the factors listed above, this case warrants a \$3,000 forfeiture.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>7</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>8</sup> Davies Communications Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Section 73.3526(a)(2) of the Rules by failing to maintain an issues and programs list in the public files of stations KBBE and KNGL.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Davies Communications Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th

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<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>4</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> 47 U.S.C. § 503 (b)(2)(D).

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

Street, S.W., Washington, D.C. 20554.<sup>9</sup>

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Davies Communications Inc., P.O. Box 1069, McPherson, Kansas 67460.

#### FEDERAL COMMUNICATIONS COMMISSION

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<sup>9</sup> See 47 C.F.R. § 1.1914.

Robert C. McKinney  
District Director  
Kansas City Office  
Enforcement Bureau

Attachment